IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Cr. Appeal No.526 Of 1999.

Date of decision: June 18th, 2007.

State of Himachal Pradesh. ……. Appellant.

Vs.

Rajinder Singh. ……. Respondent.

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The Hon'ble Mr.Justice Surinder Singh, Judge.

Whether approved for reporting? No.

For the Appellant: Mr.V.K.Verma, Addl.Advocate General.

For the respondent: Mr.Virneder Singh Chauhan, Advocate.

Surinder Singh, J(oral):

The instant appeal has been directed by the State of Himachal Pradesh, feeling aggrieved and dissatisfied by the judgment of acquittal passed by the Judicial Magistrate Ist Class, Bilaspur, in Criminal Case No. 236/1 of 1997 (157/2 of 1997), on 24th April, 1999 whereby the respondent was acquitted of the charges under Sections 279/337 of the Indian Penal Code read with Section 185 of the Motor Vehicles Act.

In brief, the facts giving rise in the instant appeal are that Shri Pal Singh alias Kumar (PW1) was the driver of Martui Van No.HP-02-4067. He was on his way to Shimla from Mandi alongwith Ashok Kumar (PW2) and his wife, passengers. Near School at village Beri, at about 7.45 a.m., one truck bearing

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Whether reporters of local Papers may be allowed to see the judgment? Yes.

No.HP-23-1547 being driven by PW5 Subhash Chand was ahead of Maruti Van and another truck of HPSEB, bearing registration No.HPC-831 was behind the Maruti Van, driven by the respondent. It is alleged that Subhash Chand (PW5) had applied breaks of his truck suddenly on seeing the children crossing the road near the School. Consequently, Pal Singh also applied the breaks of his Maruti Van, in that process respondent driven truck No.HPC-831 hit the Maruti Van from behind and got caught up between truck No. H.P.23-1547 and alleged offending truck No.HPC-831. PW-1 got injured and his Van was badly damaged. The matter was reported to the police by Sh. Baldev Chauhan (PW9) telephonically, who was the occupant of Truck HPC 831, belonging to HPSEB; on this Rapat No.27 was recorded, on the basis of which FIR Ext.PW1/B was formally registered against the respondent.

Police visited the spot, prepared site plan Ext.PW13/A, took the photographs of the accidental site and both the vehicles impounded and were mechanically examined. The reports are Ext.PW7/A and Ext.PW7/B. The Injured (PW1) was also medically examined. Some injuries were found on his person. The respondent was also medically examined. His medical report is Ext.Py and it was found that the respondent had consumed the liquor. Police recorded the statements of witnesses under Section 161 of the Code of Criminal Procedure and after completing the investigation, challan was presented in the court for trial.

On going through the record of the challan as well as documents appended thereto, prima-facie, the learned trial

court was of the opinion that it was a case under Section 279/337 of the Indian Penal Code read with Section 185 of the Motor Vehicles, Act. Accordingly, the notice of accusation was put to the respondent under Section 251 of the Code of Criminal Procedure. The respondent denied the allegations, accordingly the trial started.

In order to prove the charges against the respondent, the prosecution had examined as much as 13 witnesses. The respondent was also examined under Section 313 of the Code of Criminal Procedure. He denied the circumstances, which were attended upon. He did not lead any evidence. After going through the record and upon hearing parties, the learned trial court found that the evidence of the prosecution was full of the contradictions and the statements of the witnesses were not enough to prove the offences charged, accordingly, the respondent was acquitted.

Having felt aggrieved by the impugned judgment, the instant appeal has been filed. Leave to appeal was granted by this court vide order dated 3.12.1999. The grounds in appeal are that the learned trial court did not appreciate the evidence of PWs 1,2,4 and 5 in its right perspective in the light of photographs and the site plan, prepared by the police on the spot. Therefore, the impugned judgment requires to be set-aside and prayed to convict and sentence the respondent.

I have heard the learned counsel for the parties and have gone through the record of the case in all meticulous details.

According to Shri V.K. Verma, learned Additional Advocate General, the prosecution witness were able to prove the case beyond shadow of reasonable doubt and he took pains to take me through the evidence of the witnesses of the prosecution and ventilated that the ingredients of the offence stood fully proved, thus the findings of the learned trial court are incorrect.

Contra, Shri Virender Singh Chauhan, learned counsel for the respondent has forcefully argued that the prosecution witnesses did not whisper even a word regarding rash or negligent driving of the respondent, and pointed out the contradictions of the prosecution witnesses in support of the impugned judgment. To support his version, he has relied upon **Gurcharan Singh** v. **State of Himachal Pradesh** **[1991 CRL.L.J.(HP) 771].** He further referred the statement of PW-10 Dr. S.P. Dhiman, who had examined the respondent and issued MLC Ext.PY, whereby the Doctor had observed that the respondent had consumed liquor, without the urine and blood test and urged that the consumption of liquor is not enough until the respondent is found under the influence of liquor at the time of driving the vehicle. In nut shell, the learned counsel for the respondent has supported the findings arrived at by the learned trial court.

In order to appreciate the rival contentions of the parties, I have carefully gone through the statements of the witnesses. Succinctly, stated the prosecution relied upon the statement of PW-5 Subhash Chand, who was the driver of the Truck No.HP-23-1547 which was ahead of the Maruti van of

PW1. He has stated that when he reached near the School at village Beri, he noticed that some students suddenly crossed the road. He immediately applied his breaks. The moment, PW-1 tried to overtake his vehicle by his Maruti Van, it was hit by the truck HPC-831, which was coming behind the Van aforesaid and was being driven by the respondent and was being driven by the respondent. In the cross-examination, he has stated that had he not applied the breaks on seeing the students, the accident would not have occurred and categorically admitted that the respondent was not at fault at the relevant time. Pal Singh (PW1) has also not deposed that the respondent was rash and negligent in driving his truck, but stated in cross -examination that the respondent was not at fault and the accident took place due to sudden applying of the breaks by PW-5. PW9 Baldev Chauhan, complainant and Ashok Kumar (PW2) also corroborated this fact and stated that everything happened all of sudden. PW-4 Ramesh Kumar was the cleaner of the truck HP-23-1547. He did not say anything about the cause of the accident. Baldev Chauhan aforesaid was categorical in his statement that accident took place on account of the fault of the driver of truck No.HP-23-1547 (PW5) and also did not implicate the respondent. Further none of the witnesses have stated before the trial court that the respondent was drunk at the time of accident. His medical examination was done after about three hours of the accident which could not co-relate the consumption of liquor by the respondent and more so that he was driving the alleged offending vehicle under the influence of liquor.

On the critical examination of the aforesaid evidence, two views are deducible. The view taken by the learned trial court for acquittal is possible on the evidence on record. It is an established fact that when two views are deducible, favourable to the accused has to be taken into account and even in appeal against acquittal the innocence of the accused still remains. The evidence of the prosecution is discrepant. Thus, it is not possible for this court to convict the respondent, if the another view is possible. While sifting the evidence on record, in my considered opinion, the view taken by the learned trial court does not dehors the evidence on record. Therefore, I do not find anything worth interference in the impugned judgment of acquittal passed by the learned trial court. Accordingly, the appeal is dismissed.

June 18th, 2007. **(Surinder Singh)**
(PDS) **Judge**.